

Pt. 900 (Note)

7 CFR Ch. X (1-1-03 Edition)

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965]

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice

to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 900.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term *Department* means the United States Department of Agriculture;

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;